

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation & Petition to
Revoke Probation Against:

GEORGE ANTHONY NAVARRO
554 5th Street
Ontario, CA 91764

Case No.: R-2080

OAH No.: L2007070027

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on January 30, 2008.

It is so ORDERED January 23, 2008.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation and
Petition to Revoke Probation Against:**

GEORGE ANTHONY NAVARRO

**Respiratory Care Practitioner License
No. 24834**

Respondent.

Case No. R-2080

OAH No. L2007070027

PROPOSED DECISION

This matter came on regularly for hearing on November 9, 2007, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Stephanie Nunez (Complainant) was represented by Richard D. Marino, Deputy Attorney General.

George Anthony Navarro (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was held open for 10 days for Respondent to submit evidence, including receipts or other evidence of payment, that probation monitoring costs had been paid.

On November 19, 2007, the Administrative Law Judge received a letter from Complainant's counsel, dated November 16, 2007, attached to which was an e-mail addressed to Complainant's counsel regarding the status of Respondent's probation monitoring payments. No request for the submission of late documents having been received from Complainant, the November 16, 2007 letter and its attachment were neither marked for identification nor considered.

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On November 19, 2007, one exhibit, consisting of a money order receipt, was received from Respondent. However, attached to that exhibit was another exhibit entitled "Employer Acknowledgement," dated July 19, 2006. The two documents were collectively marked as Respondent's Exhibit "A" for identification. On November 19, 2007, the record was closed.

Nothing in either of the exhibits Respondent submitted after the hearing date indicated that a copy was sent to Complainant's counsel as ordered by the Administrative Law Judge. On November 29, 2007, the Administrative Law Judge re-opened the record and issued a Notice of Ex Parte Communications and Order. The Order allotted Complainant a period of time, to and including December 14, 2007, for Complainant to comment on the ex parte communications. No response to that Order was received. Exhibit "A" was therefore admitted into evidence.

On December 14, 2007, the record was closed, and the matter was deemed submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Stephanie Nunez made the Accusation in her official capacity as the Executive Officer of the Respiratory Care Board, Department of Consumer Affairs, State of California (Board).

2. On December 21, 2005, the Board issued Respiratory Care Practitioner License No. 24834 to Respondent. The license was in effect at all relevant times. Pursuant to a Stipulated Settlement, Decision and Order in the case of *In the Matter of the Statement of Issues Against George A. Navarro*, Case No. S-349, the license was issued on a probationary basis for three years based on Respondent's admissions that, in March 1999, he had been convicted of violating Penal Code section 422 (Making Terrorist Threats), and that he had possessed and used controlled substances (marijuana and methamphetamine) between September 2000, and March 2001.¹

¹ According to the Accusation and Petition to Revoke Probation, Respondent's license is scheduled to expire on April 30, 2009, unless renewed. According to the license certification issued by the Board, the license was scheduled to expire on April 30, 2007. The expiration date in the license certification is deemed an error since, in the same document, the Board states that Respondent's license was placed on probation for three years effective December 21, 2005. If all of the dates in the license certification were true, Respondent would still be on probation for approximately 1.5 years after the license's initial expiration date. It is unlikely the Board would commit itself to a renewal of the license, even on a probationary basis, given the circumstances under which the license was originally granted.

The Causes to Revoke Probation

3. Condition No. 1 in the Stipulated Settlement and Disciplinary Order reads:

WORK SCHEDULES Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of his current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis shall constitute a violation of probation, and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

4. Complainant alleged that Respondent failed to provide any work schedules to his probation monitor since the commencement of his probationary period. However, Complainant offered no evidence to support that allegation. Therefore, the first cause to revoke probation was not proven.

5. Condition No. 3 in the Stipulated Settlement and Disciplinary Order reads:

ABSTENTION FROM USE OF DRUGS AND ALCOHOL Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health records. Respondent shall also provide information of treating physicians, counselors or any other treating professionals as requested by the Board.

Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation, and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

6. On January 24, 2007, Respondent submitted to biological fluid testing in compliance with Condition No. 2 of the Stipulated Settlement and Disciplinary Order. The results of that test were positive for Ethanol at .048 grams/deciliter. The laboratory cutoff level (referred to as the "Reporting Limit" in the report) was .020 grams/deciliter.

7. On February 2, 2007, Respondent submitted to biological fluid testing in compliance with Condition No. 2 of the Stipulated Settlement and Disciplinary Order. The results of that test were positive for Ethanol at .048 grams/deciliter. The laboratory cutoff level was .020 grams/deciliter.

8. On February 15, 2007, Respondent submitted to biological fluid testing in compliance with Condition No. 2 of the Stipulated Settlement and Disciplinary Order. The results of that test were positive for Ethanol at .032 grams/deciliter. The laboratory cutoff level was .020 grams/deciliter.

9. On March 10, 2007, Respondent submitted to biological fluid testing in compliance with Condition No. 2 of the Stipulated Settlement and Disciplinary Order. The results of that test were positive for Ethanol at .088 grams/deciliter. The laboratory cutoff level was .020 grams/deciliter.²

10. Respondent denies knowing that he would be tested for alcohol. Therefore, he drank beer or wine before submitting to the biological fluid tests referenced above. That explanation was not convincing for the following reasons:

a. Condition No. 2 of the Stipulated Settlement and Disciplinary Order reads in relevant part:

At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested, and submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances.

b. Condition No. 3 of the Stipulated Settlement and Disciplinary Order required Respondent to completely abstain from the possession or use of alcohol.

c. Respondent met with his probation monitor who reviewed each term and condition of probation with Respondent.

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² A fifth report, indicating a collection date of May 29, 2007, was admitted in evidence as part of the exhibit containing the other four reports. The May 29, 2007 report indicates a positive test for Ethyl Glucuronide. However, that probation violation is not alleged, and the report is considered only as a factor in aggravation.

11. Condition No. 3 in the Stipulated Settlement and Disciplinary Order reads:

RESTRICTION OF PRACTICE Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions.

Respondent is prohibited from working in home care unless it is under direct supervision and personal observation.

12. On or about April 7, 2006, Respondent was hired as a respiratory therapist at French Park Care Center, a large skilled nursing facility in Santa Ana, California. He was subsequently promoted to the position of Respiratory Therapy Director. Respondent is still employed at that facility in its sub-acute care unit.

13. Condition No. 6 in the Stipulated Settlement and Disciplinary Order reads:

QUARTERLY REPORTS Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation, and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

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14. Complainant alleges that Respondent failed to submit quarterly reports for reporting periods ending on September 30, 2006, December 31, 2006, and March 31, 2007. However, Complainant failed to offer any evidence to support that allegation. Although Respondent admitted he failed to submit "a couple" of quarterly reports, that admission does not establish the truth of the allegation since Respondent did not specify the reporting periods for which he missed the reports. Were Respondent's license to be disciplined for his failure to submit reports for reporting periods other than those alleged, he would be deprived of his due process rights.

15. Condition No. 8 in the Stipulated Settlement and Disciplinary Order reads:

PROBATION MONITORING COSTS All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he shall be required instead to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for costs incurred.

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16. In the Statement of Issues, Complainant alleged that Respondent failed to pay probation monitoring costs of \$800 for October, November and December 2006, and January, February, March, April and May, 2007, and that he failed to submit an explanation for his not doing so. Complainant did not submit any evidence to support the allegation. However, Respondent admitted that he failed to make timely probation monitoring payments, and he submitted a money order receipt, dated May 16, 2007, in the sum of \$811, indicating that the arrearages had ultimately been paid. Respondent's admission, together with the date and sum of the money order receipt, are sufficient to establish the truth of the allegation.

17. Respondent offered no reason for his failure to provide the Board with an explanation as to why he failed to ~~submit an explanation of his inability to~~ pay the probation monitoring costs for any of the eight months referenced above.

18. Condition No. 10 in the Stipulated Settlement and Disciplinary Order reads:

NOTICE TO EMPLOYER Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms, if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.

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19. Complainant alleges that Respondent failed to comply with Condition No. 10 in the Stipulated Settlement and Disciplinary Order. The allegation is based on an Employer Acknowledgement, dated, March 9, 2007, signed by Respondent's supervisor at French Park Care Center, on which the supervisor responded negatively to the questions, "As the employer, did the probationer provide you with a hard copy of his/her Decision and Order in this case?" and "As the employer, did the probationer provide you with a hard copy of his/her Accusation or Statement of Issues in this case?" Respondent is listed as "Respiratory Therapy Director" on the March 9, 2007 Employer Acknowledgement.

20. However, Respondent submitted different Employer Acknowledgement, dated July 19, 2006, on which he is listed as an "R.T." The document is signed by the same supervisor who signed the March 9, 2007 Employer Acknowledgement. On the Employer Acknowledgement dated July 19, 2006, the supervisor answered affirmatively the two questions referenced in paragraph 19, above. Given the supervisor's answers to those questions on the earlier Employer Acknowledgement, Complainant did not prove that Respondent failed to comply with Condition No. 10 in the Stipulated Settlement and Disciplinary Order.

The Cause for Discipline

21. On or about March 12, 2007, Respondent completed and submitted a Drug Questionnaire to the Board. On that document, he denied having ingested any prescribed medications, narcotics or drugs during the previous three months. The only over-the-counter medications he indicated he had ingested during the previous three months were DayQuil and NyQuil. In response to the question, "In the last 3 months, have you consumed alcohol," Respondent checked the box marked "no." Under the heading "Identify any Additional Factors, Circumstances, or Explanations," Respondent wrote:

I use Ibuprofen sometimes for persistant [*sic*] headaches. I sometimes use over counter meds for cough and flue symptoms. Because I work around a lot of sick people and patients, I tend to get cold and flu symptoms often. Nothing else.

22. Respondent signed the Drug Questionnaire under penalty of perjury. However, his responses to alcohol-related questions on the Drug Questionnaire were false. During the three months before he submitted the Drug Questionnaire, Respondent tested positive for alcohol on four occasions. He admitted at the administrative hearing that he had consumed beer and wine during that time period.

Mitigation/Rehabilitation

23. Respondent is still employed at French Park Care Center. He has been married for 15 years and has two children, ages 14 and 9.

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24. Before becoming a respiratory care therapist, Respondent served as an emergency medical technician, phlebotomist, and medical assistant, and as a medic in the United States Army. He left his job as an emergency medical technician to become a respiratory care therapist because of the higher salary of a respiratory care practitioner and because "it was time to move on." Respondent enjoys helping people in his career.

Costs

25. The Board requests costs in the total sum of \$3,251 in connection with the investigation and prosecution of this action. Those costs consist of attorney general fees of \$1,343, paralegal fees of \$808, and current outstanding probation monitoring costs of \$1,100.

26. The outstanding probation monitoring costs are denied. The cause to revoke probation on grounds that Respondent failed to pay probation monitoring costs is sustained because he failed to timely pay the costs or submit an explanation for his failure to do so. However, the evidence established that Respondent did eventually pay the costs alleged in the operative pleading.

27. The award of costs in this case is governed by Business and Professions Code section 3753.5 which states in relevant part:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case.

28. Business and Professions Code section 3753.7 states:

For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

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29. Of the six causes to revoke probation and the single cause for discipline alleged in the Accusation and Petition to Revoke Probation, Complainant prevailed on only three causes to revoke probation and the cause for discipline. In fact, Respondent failed to offer any evidence at all to support three of the causes to revoke probation, and prevailed on one of them only because of Respondent's admission and evidence. A reasonable cost recovery under those circumstances is half of the claimed attorney general and paralegal fees. Complainant shall recover costs of \$1,075.50.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions.

1. Cause exists to revoke Respondent's probation, pursuant to Business and Professions Code sections 3718 and 3750 subdivision (g), for failure to comply with various terms and conditions of probation, as set forth in Findings 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 and 17.

2. Cause does not exist to revoke Respondent's probation, pursuant to Business and Professions Code sections 3718 and 3750, subdivision (g), for failure to comply with various terms and conditions of probation, as set forth in Findings 3, 4, 13, 14, 18, 19 and 20.

3. Cause exists to revoke or suspend Respondent's respiratory care practitioner license, pursuant to Business and Professions Code section 3750, subdivision (j), for a fraudulent, dishonest or corrupt act, as set forth in Findings 21 and 22.

4. Cause exists to order Respondent to pay costs claimed under Business and Professions Code sections 3753.5 and 3753.7, as set forth in Findings 25, 26, 27, 28 and 29.


5. Respondent has been licensed as a respiratory care practitioner only slightly over two years. His license was issued on a probationary basis, and it has remained in that status during his entire period of licensure. Within the brief time he has been licensed, Respondent has committed several probation violations, and he has engaged in one act of fraud, dishonesty or corruption. The reasons he offered for his conduct were not credible in that they were belied by the other evidence offered at the hearing. Given the criminal conduct that resulted in the issuance of the probationary license initially, Respondent's probation violations and dishonesty in filling out the Drug Questionnaire, and the want of evidence of justification, mitigation or rehabilitation, no reason was offered, and none can be discerned, for Respondent to retain his licensure, even in a probationary status. Licensing laws are established to protect the public health, safety, welfare and interest. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457; *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.) In light of all the circumstances presented at the hearing, public protection cannot be ensured by Respondent's continued licensure.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The probation granted to Respondent, George Anthony Navarro, by the Respiratory Care Board of California in Case No. S-349 is revoked.
2. Respiratory Care Practitioner License No. 24834, granted to Respondent, George Anthony Navarro, is revoked.
3. Respondent is ordered to reimburse the Board the amount of \$1,075.50 within 90 days from the effective date of this decision for its prosecution costs, unless the Board agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board for its prosecution costs.

DATED: January 4, 2008


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings